

1 KARL R. LINDEGREN, SBN 125914
2 SHAUN J. VOIGT, SBN 265721
3 FISHER & PHILLIPS LLP
4 2050 Main Street, Suite 1000
5 Irvine, California 92614
6 Telephone (949) 851-2424
7 Facsimile (949) 851-0152

8
9 Attorneys for Defendant,
10 WIZARDS OF THE COAST LLC

11
12 David Borgen (SBN 099354)
13 Of Counsel
14 dborgen@gbdhlegal.com
15 James Kan (SBN 240749)
16 jkan@gbdhlegal.com
17 Katharine Fisher (SBN 305413)
18 GOLDSTEIN, BORGEN, DARDARIAN & HO
19 300 Lakeside Drive, Suite 1000
20 Oakland, CA 94612
21 Tel: (510) 763-9800
22 Fax: (510) 835-1417

23 Michael Malk (SBN 222366)
24 mm@malklawfirm.com
25 MICHAEL MALK, ESQ. APC
26 1180 S. Beverly Drive, Suite 302
27 Los Angeles, California 90035
28 Tel: (310) 203-0016
Fax: (310) 499-5210

17 Attorneys for PLAINTIFF
18 AND THE PUTATIVE CLASS

19
20 UNITED STATES DISTRICT COURT
21
22 NORTHERN DISTRICT OF CALIFORNIA

23 PAUL YALE, individually and on
24 behalf of others similarly situated,

25 Plaintiffs,

26 vs.

27 WIZARDS OF THE COAST, LLC and
28 DOES 1 through 100, inclusive,

Defendant.

Case No. 15-CV-06337-EJD

[Removed from Santa Clara Superior
Court Case No.: 1-15-CV-287452]

**FIRST JOINT CASE
MANAGEMENT STATEMENT
AND FED. R. CIV. P. 26(f) REPORT**

Complaint Filed: October 29, 2015
Trial Date: None

1 Plaintiff PAUL YALE (“Plaintiff”) and Defendant WIZARDS OF THE
 2 COAST LLC (“Defendant” or “Wizards”), by and through their respective
 3 counsel of record, submit the following Joint Case Management Statement and
 4 Federal Rule of Civil Procedure 26(f) Report.

5 Pursuant to *Federal Rules of Civil Procedure* Rule 26(f) and Civil Local
 6 Rule 16-9, counsel for the parties conferred regarding case management, the
 7 nature of the parties’ claims and defenses and dispute resolution procedures, to
 8 develop a discovery plan and prepare the joint report to the Court, and to make
 9 arrangements for the required Initial Disclosures between the parties.

10 James Kan participated in the conference on behalf of Plaintiff. Shaun J.
 11 Voigt participated on behalf of Wizards.

12 **I. JURISDICTION AND SERVICE**

13 On December 31, 2015, Defendant removed this action to the U.S. District
 14 Court for the Northern District of California pursuant to 28 U.S.C. §§ 1332(d)(2),
 15 1441 (CAFA), and 1446 (diversity jurisdiction). ECF No. 1. The Court also has
 16 supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. §
 17 1337(a). *Id.* Plaintiff originally filed his complaint in Santa Clara County
 18 Superior Court on October 29, 2015. *Id.* No other parties remain to be served.

19 **II. FACTS**

20 **Plaintiff:**

21 Defendant Wizards of the Coast, LLC (“Wizards”) is a private sector, for-
 22 profit business that sells products related to a collectible card game called Magic
 23 the Gathering (“Magic”). Wizards runs an extensive and highly regulated system
 24 of tournaments for Magic players. The tournaments are created, controlled, and
 25 regulated by Defendant. Tournaments are used as a marketing tool to keep
 26 players active in the game and give Defendant a means to sell their product.
 27 Tournaments are overseen by Judges who are highly regulated by Defendant
 28 through its Judge Certification Program.

1 Defendant maintains a system of Judge Levels from one to five, with
 2 increasing work requirements, and rigorous certification exams. Judges must go
 3 through training and testing, and must document participation in tournaments.
 4 Acquiring and maintaining certification as a Judge requires around twenty-five
 5 hours per month per Judge Level. Judges are expected to read extensive
 6 announcements, directives, instructions, rulings, and discussions by e-mail and on
 7 various Wizards' websites, provide their contact information on the Wizards'
 8 website, contribute reports, renew their certification with regular testing, train
 9 other Judges, and provide evaluations of other Judges.

10 Wizards retains the right to refuse to engage Judges for a certain period of
 11 time, or even indefinitely, as Wizards can suspend, demote, or decertify any of its
 12 Judges. Wizards maintains detailed policies whereby Wizards can demote Judges
 13 to the status of a lower level Judge when, according Wizards, "the actions of the
 14 Judge were unbecoming of their level, or where the prestige, authority, or
 15 responsibilities associated with a judge's level were an important factor in the
 16 misconduct." First Amended Complaint at at 6, ECF No. 14.

17 The work performed by Judges for the benefit of Defendant and under its
 18 close supervision and control created an employer and employee relationship with
 19 Plaintiff and similarly situated Judges. As their employer, Defendant is obligated
 20 to pay Plaintiff and similarly situated Judges wages compliant with the California
 21 Labor Code and Fair Labor Standards Act ("FLSA"), including but not limited to
 22 minimum and overtime wages. Defendant is also required to comply with other
 23 provisions of the California Labor Code including the requirements to provide
 24 timely off-duty meal and rest periods, to furnish accurate and timely wage
 25 statements, maintain adequate pay roll records, and reimburse employee business
 26 expenses. Defendant's failure to properly classify Plaintiff and the putative class
 27 as employees also constitute violations of the Unfair Competition Laws ("UCL")
 28 and the Private Attorney General Act ("PAGA").

1 **Defendant:**

2 Wizards is a worldwide leader in the trading card game category, producing
3 the highly popular “Magic: The Gathering®” trading card game and trading cards
4 (“Magic”). Magic is a trading card game for ages 13+ set in a fantasy world of
5 powerful wizards who have the ability to teleport between planes of existence.

6 Though the game is complex, the premise of Magic is simple: build a deck
7 of 60 Magic cards and defeat your opponent by bringing his life total from 20
8 points to zero. While enjoyed casually around kitchen tables and hobby stores,
9 Magic enthusiasts can chose to play in events and tournaments across the U.S. and
10 internationally held in stores, convention centers, or other public venues. The
11 overwhelming majority of these events are run by local game stores or
12 independent tournament organizers without any direct oversight, or involvement
13 by Wizards. Such events may feature a rules arbitrator (a “Judge”). Generally,
14 Judges are highly engaged members of the Magic gaming community and active
15 players of Magic who understand Magic’s nuanced rules, and elect to participate
16 in the game not only as players but as judges (another form of participation)—and
17 often as both in the same game or tournament.

18 Each of Plaintiff’s claims are predicated on the contention that he and all
19 other Judges in California and throughout the United States are “employees” of
20 Defendant for purposes of the California *Labor Code*, Industrial Welfare
21 Commission Wage Orders, and/or the FLSA. As a result, Plaintiff contends that
22 he and others did not receive all wages due (including minimum wage and
23 overtime), were not provided with legally compliant meal and rest periods, were
24 not paid all wages due at separation, and received inaccurate wage statements.
25 Based on these allegations, Plaintiff also contends that Defendant engaged in
26 unfair business practices in violation of California’s *Business & Professions*
27 *Code*, and is liable to Plaintiff and others for civil and statutory penalties,
28 including penalties pursuant to California’s Private Attorneys General Act.

1 Wizards denies Plaintiff's allegations in their entirety. Specifically,
 2 Wizards denies that it employs or has ever employed Plaintiff for purposes of the
 3 FLSA, the California *Labor Code*, the California Industrial Welfare
 4 Commission's Wage Orders, or under any other basis for purposes of creating
 5 liability under any claim asserted in the FAC. Accordingly, Wizards denies that it
 6 had any obligation to Plaintiff under such statutes. Moreover, while Wizards does
 7 financially compensate the Judges it contracts with under written agreements and
 8 as independent contractors for the limited number of *Magic* events that it runs—
 9 i.e. the Magic Pro Tour, the World Magic Cup, and the Magic World
 10 Championship—Plaintiff has never Judged such an event.

11 Wizards also disputes that Plaintiff can meet his burden of establishing that
 12 this case is appropriate for class or collective action certification. Finally,
 13 Wizards contends that Plaintiff's claims fail as a matter of law, and as a result, has
 14 filed a motion to dismiss pursuant to *FRCP* Rule 12(b)(6).

15 **III. LEGAL ISSUES**

16 **Plaintiff:**

17 This case turns on whether Plaintiff and putative class members were
 18 employees of Defendant under California law and the FLSA. Under California
 19 law, there are three tests of employment status, which look to whether (1) Wizards
 20 exercised control over the class' wages, hours, or working conditions; (2) suffered
 21 or permitted them to work; or (3) engaged them to work. Under the FLSA, the
 22 test is whether the economic realities surrounding judges confirms that they are
 23 employees. Plaintiff's Opp. to Def's Motion to Dismiss First Am. Complaint at
 24 5-21, ECF No. 19. If Plaintiff is correct that judges are, in fact, employees, then
 25 Plaintiff's and the class' derivative claims under the FLSA and California law will
 26 flow from there. In addition, because this is a putative collective and class action,
 27 this case presents the issues of certification under Section 216(b) and Federal Rule
 28 of Civil Procedure 23.

1 **Defendant:**

2 Each of Plaintiff's claims are predicated on the contention that he and all
 3 other Judges in California and throughout the United States are "employees" of
 4 Wizards for purposes of the California *Labor Code*, Industrial Welfare
 5 Commission Wage Orders, and/or the FLSA. As addressed in Wizards' pending
 6 motion to dismiss, a threshold issue is whether Plaintiff's First Amended
 7 Complaint states a viable claim for relief against Wizards. If the case proceeds
 8 beyond the pleadings, another threshold issues is whether Plaintiff can certify a
 9 class and/or collective action against Wizards.

10 Plaintiff's claims alleging unpaid wages, meal and rest period violations,
 11 wage statement violations, waiting time penalties, unfair competition, and related
 12 state law claims present a number of legal issues. However, each of these claims
 13 are predicated on an alleged employer-employee relationship. As such, the key
 14 legal issue is whether Plaintiff and the broadly defined putative class are/were
 15 employees of Wizards pursuant to California law and/or the FLSA.

16 **IV. MOTIONS**

17 **Plaintiff:**

18 Plaintiff anticipates bringing a motion for collective action
 19 notice/conditional certification under 29 U.S.C. § 216(b) as well as a motion for
 20 class certification of the California class pursuant to Federal Rule of Civil
 21 Procedure 23.

22 As to Defendant's administrative motion to determine related case status
 23 with *Shaw et al. v. Wizards of the Coast, LLC*, Case No. 4:16-cv-01924-PJH,
 24 Plaintiff agrees that the matters should be deemed related and coordinated. As set
 25 forth in that motion, these actions are related because they concern substantially
 26 the same parties and claims (putative class and collective action wage and hour
 27 claims alleging that Judges at Magic events are employees of Defendant under
 28

1 California law and the FLSA) and there would be undue duplication of labor and
 2 expense from conducting these cases before different judges.

3 **Defendant:**

4 Wizards' Motion to Dismiss Plaintiff's First Amended Complaint (ECF No.
 5 18) is currently pending, and will be heard on June 9, 2016. Defendant previously
 6 filed a Motion to Dismiss on January 7, 2016 (ECF No. 7), but it was mooted by
 7 Plaintiff's First Amended Complaint (ECF No. 14).

8 On June 2, 2016, Wizards' filed an administrative motion to determine
 9 whether this and another case also pending against Defendant in this district,
 10 *Shaw et al. v. Wizards of the Coast, LLC*, Case No. 4:16-cv-01924-PJH (N.D.
 11 Cal.), may be related. ECF No. 25.

12 Defendant anticipates bringing a Motion for Judgment on the Pleadings
 13 and/or Motion for Summary Judgment/Adjudication after initial discovery has
 14 been completed. Wizards may also move to deny class certification and strike the
 15 class action allegations in the Complaint. Wizards does not anticipate any other
 16 motions at this time but reserves all rights.

17 **V. AMENDMENT OF PLEADINGS**

18 The parties do not currently anticipate amending the pleadings, but they
 19 reserve the right to do so in the future. However, given the pending motion to
 20 dismiss, the parties agree that proposing a deadline for amending the pleadings is
 21 premature at this time.

22 **VI. EVIDENCE PRESERVATION**

23 The parties have reviewed the ESI Guidelines. The parties have met and
 24 conferred on this matter, and each party has made appropriate arrangements for
 25 the preservation of discoverable information.

26 **VII. DISCLOSURES**

27 Pursuant to Federal Rule of Civil Procedure 26(a)(1) and 26(f)(1), the
 28 parties have agreed to exchange their initial disclosures by June 16, 2016.

1 **VIII. DISCOVERY**

2 Wizards' motion to dismiss is set for hearing on June 9, 2016. Moreover,
 3 Plaintiff's FAC is a putative class action and collective action, such that
 4 procedural motions will be required if Defendant's motion to dismiss is denied or
 5 Plaintiff is able to adequately amend his complaint to avoid a subsequent motion
 6 to dismiss. As such, the parties are unable to propose a detailed discovery plan at
 7 this time. The parties recommend that the issue be deferred until after a ruling on
 8 Wizards' motion to dismiss, and if the case proceeds, class/collective action
 9 certification. With respect to additional information regarding the discovery plan
 10 required to be stated herein under Rule 26(f)(3), the Parties state the following

11 **A. Plaintiff's Subjects on Which Discovery May Be Needed**

12 Without prejudice to his right to seek discovery on any relevant issue,
 13 Plaintiff contemplates that he will need and seek discovery concerning Plaintiff's
 14 claims and Defendant's defenses.

15 **B. Defendant's Subjects on Which Discovery May Be Needed**

16 Without prejudice to its right to seek discovery on any relevant issue,
 17 Defendant contemplates that it will need and seek discovery concerning the basis
 18 of Plaintiff's claims and Defendant's defenses.

19 **C. Agreed Upon Methods of Discovery**

20 The parties agree that the Federal Rules of Civil Procedure will apply to
 21 discovery. Should additional discovery beyond what is allowable under the
 22 Federal Rules of Civil Procedure be necessary, the Parties agree to meet and
 23 confer in good faith to resolve the issues. Should the Parties be unable to resolve
 24 discovery issues, both Parties reserve their right to bring matters before the Court.

25 The Parties agree that the anticipated methods of future discovery will
 26 include: (1) written discovery in the form of Interrogatories, Requests for
 27 Admissions, and Requests for Production of Documents; (2) written discovery via
 28 issuance of subpoenas to third parties; and (3) oral depositions of Plaintiff,

1 Defendants, and other witnesses, including corporate Defendant's "person(s) most
 2 knowledgeable" under Rule 30(b)(6).

3 The parties are presently unaware of any issues about claims of privilege or
 4 protection of trial-preparation materials. However, the parties believe that a
 5 protective order, following the example of the model protective order used by the
 6 United States District Court for the Northern District of California, may be
 7 necessary and appropriate in this case.

8 **IX. CLASS ACTION**

9 **Plaintiff:**

10 Plaintiff anticipates filing a Motion for Conditional Class Certification and
 11 a Motion for Class Certification. Due to the pending motion to dismiss, Plaintiff
 12 believes it is premature to propose deadlines for these motions until that motion is
 13 resolved. Once it is, Plaintiff will meet and confer with Defendant about
 14 proposed dates if necessary.

15 Defendant's proposed Motion to Strike Class Action Allegations and/or
 16 Motion to Deny Class Certification would unnecessarily proliferate cross-briefs
 17 on the issue of certification. Plaintiff requests a scheduling order that only
 18 contemplates the filing of Plaintiff's motions for conditional class certification
 19 and subsequent motion for class certification, which will allow Defendant a full
 20 opportunity to raise any and all defenses against certification.

21 **Defendant:**

22 Defendant may move to deny class certification and strike the class action
 23 allegations in the Complaint.

24 **X. RELATED CASES**

25 The parties believe that this case may be related to *Adam Shaw et al. v.*
 26 *Wizards of the Coast LLC*, Case No. 4:16-cv-01924-PJH. Accordingly, an
 27 Administrative Motion to Consider Whether Cases Should Be Related was filed
 28 by Wizards on June 1, 2016 pursuant to Civil Local Rule 3-12.

1 Plaintiff suggests that the Court grant the parties time to coordinate
 2 potential joint prosecution of the cases to streamline the proceedings and
 3 maximize judicial economy in light of the potentially related case.

4 Defendant believes that discussion regarding potential coordination is
 5 premature, particularly pending its motion to dismiss.

6 **XI. RELIEF**

7 **Plaintiff:**

8 Plaintiff and the putative class seek to recover all unpaid wages (including
 9 minimum and overtime wages), unpaid meal and rest break premiums,
 10 unreimbursed business expenses, and related penalties. Plaintiff is currently
 11 unable to provide a dollar amount for the damages, but will do so after the
 12 completion of discovery. They also seek appropriate declaratory and injunctive
 13 relief, interest, reasonable attorneys' fees and costs, and other relief deemed just
 14 and proper by the Court. First Am. Complaint at 19-20.

15 **Defendant:**

16 Wizards denies that Plaintiff and/or the putative class have sustained any
 17 injury, damage, or loss by reason of any act or omission by Wizards, and
 18 specifically deny any loss or damage as alleged in the First Amended Complaint.

19 **XII. SETTLEMENT AND ADR**

20 The parties participated in a conference call with ADR Program Director
 21 Howard Herman on June 2, 2016. Defendant believes it is too early in the
 22 litigation to commit to an ADR procedure at this time. The parties scheduled a
 23 follow-up call with Mr. Herman to take place on October 31, 2016.

24 **XIII. CONSENT TO MAGISTRATE**

25 On January 7, 2016, Wizards filed a "Declination to Magistrate Judge
 26 Jurisdiction." ECF No. 8.

27 **XIV. OTHER REFERENCES**

28 Not applicable.

1 **XV. NARROWING OF ISSUES**

2 **Plaintiff:**

3 After conducting initial discovery, Plaintiff is willing to confer with
4 Defendant to determine whether the Parties will be able to stipulate to any facts.

5 **Defendant:**

6 Defendant believes that it is premature at this time to determine whether the
7 issues in this case can be narrowed.

8 **XVI. EXPEDITED TRIAL PROCEDURE**

9 Not applicable.

10 **XVII. SCHEDULING**

11 The Parties agree that any discovery deadlines, trial dates, expert exchange
12 dates, and the like should be postponed until the Court makes a determination on
13 Defendant's pending motion to dismiss and administrative motion to determine
14 whether this action is related to the *Shaw* case.

15 **XVIII. TRIAL**

16 The Parties respectfully request that the Court refrain from setting a trial
17 date until after the hearing on Plaintiff's Motion for Class Certification. Similarly,
18 the Parties agree that estimating the duration of trial is premature at this time
19 because, in addition to the pending motion to dismiss, the date and duration of
20 trial will depend largely on whether and how the Court certifies Plaintiff's
21 putative classes. Plaintiff requests a jury trial.

22 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR
23 PERSONS**

24 On December 31, 2015, Wizards filed its Corporate Disclosure Statement
25 indicating that it is a wholly owned subsidiary of Hasbro, Inc., a publically traded
26 company (NYSE: HAS). ECF No. 4. On January 19, 2016, Plaintiff filed his
27 certification of interested parties, indicating that there are no interested entities or
28 parties subject to disclosure. ECF No. 13.

1 **XX. PROFESSIONAL CONDUCT**

2 The attorneys of record for both parties either have or will review the
3 Guidelines for Professional Conduct for the Northern District of California prior
4 to the case management conference set for June 9, 2016.

5
6 DATE: June 2, 2016

FISHER & PHILLIPS LLP

7 By: /s/ Shaun J. Voigt _____
8 KARL R. LINDEGREN
9 SHAUN J. VOIGT
10 Attorneys for Defendant,
11 WIZARDS OF THE COAST LLC

12
13 DATE: June 2, 2016

GOLDSTEIN, BORGREN,
DARDARIAN & HO

14 By: /s/ James Kan _____
15 DAVID BORGREN
16 JAMES KAN
17 Attorneys for Plaintiff,
18 PAUL YALE

19 **ATTESTATION**

20 Pursuant to General Order 45(X), I attest that concurrence in the filing of
21 this document has been obtained from each of the other signatories.

22 DATE: June 2, 2016

FISHER & PHILLIPS LLP

23 By: /s/ Shaun J. Voigt _____
24 KARL R. LINDEGREN
25 SHAUN J. VOIGT
26 Attorneys for Defendant,
27 WIZARDS OF THE COAST LLC

PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with the law offices of FISHER & PHILLIPS LLP and my business address is 2050 Main Street, Suite 1000, Irvine, California, 92614.

On June 2, 2016, I served the foregoing document entitled **FIRST JOINT CASE MANAGEMENT STATEMENT AND FED. R. CIV. P. 26(f) REPORT**, on all the appearing and/or interested parties in this action by placing *the original* *a true copy* thereof enclosed in sealed envelope(s) addressed as follows:

SEE ATTACHED MAILING LIST

- 9 [by MAIL] I am readily familiar with the firm's practice of collection and
10 processing correspondence for mailing. Under that practice it would be
11 deposited with the U.S. Postal Service on that same day with postage
12 thereon fully prepaid at Irvine, California in the ordinary course of
13 business. I am aware that on motion of the party served, service is
14 presumed invalid if postage cancellation date or postage meter date is more
15 than one day after date of deposit for mailing this affidavit.

16 [by ELECTRONIC SUBMISSION] - I served the above listed
17 document(s) described via the United States District Court's Electronic
18 Filing Program on the designated recipients via electronic transmission
19 through the CM/ECF system on the Court's website. The Court's CM/ECF
20 system will generate a Notice of Electronic Filing (NEF) to the filing party,
21 the assigned judge, and any registered users in the case. The NEF will
22 constitute service of the document(s). Registration as a CM/ECF user
 constitutes consent to electronic service through the court's transmission
 facilities.

16 [by FEDERAL EXPRESS] I am readily familiar with the firm's practice
17 for collection and processing of correspondence for overnight delivery by
18 Federal Express. Under that practice such correspondence will be
19 deposited at a facility or pick-up box regularly maintained by Federal
20 Express for receipt on the same day in the ordinary course of business with
21 delivery fees paid or provided for in accordance with ordinary business
22 practices.

16 STATE - I declare under penalty of perjury under the laws of the State of
17 California that the foregoing is true and correct.

Executed on **June 2, 2016** at Irvine, California.

Jill McIntee

By:

Signature

MAILING LIST

<p>3 David Borgen, Esq. GOLDSTEIN, BORGEN, DARDARIAN & HO 300 Lakeside Drive, Suite 1000 Oakland, CA 94612 Telephone: (510) 763-9800 Facsimile: (510) 835-1417 Email: dborgen@gbdhlegal.com</p>	<p>4 5 6 7 Attorneys for Plaintiff, PAUL YALE</p>
<p>8 Michael Malk, Esq. MICHAEL MALK, ESQ, APC 1180 S. Beverly Drive, Suite 302 Los Angeles, CA 90035 Telephone: (310) 203-0016 Facsimile: (310) 499-5210 Email: mm@malklawfirm.com</p>	<p>9 10 11 Attorneys for Plaintiff, PAUL YALE</p>